PAKISTAN

In 1996, the U.S. trade surplus with Pakistan was $11 million, a shift of $274 million from the U.S. trade deficit of $263 million in 1995. U.S. merchandise exports to Pakistan were $1.3 billion, an increase of $343 million (36.7 percent) from the level of U.S. exports to Pakistan in 1995. Pakistan was the United States' fiftieth largest export market in 1996. U.S. imports from Pakistan were $1.3 billion in 1996, an increase of $69 million (5.8 percent) from the level of imports in 1995.

After years of inward looking trade policy that restricted participation in world markets, Pakistan since the late 1980's generally has been reducing levels of tariff and non-tariff protection and state intervention in trade as part of a comprehensive macroeconomic and structural reform program. Implementation has been uneven, however, and government protection continues to restrict U.S. exports to Pakistan and the country's fuller integration into the world economy.

IMPORT POLICIES

In recent years, Pakistan has significantly reformed its restrictive import regime by reducing tariffs on many products and lifting some bans and quantitative restrictions. In 1993-94 the government began a three-year program to reduce maximum tariffs from over 90 percent to 35 percent. However, due in part to the central government's fiscal dependence upon customs revenue, Pakistan has been unable to meet this schedule and also achieve the goal of reducing its overall fiscal deficit.

In the 1995-96 fiscal year that began July 1, 1995, maximum tariffs were set at 65 percent, well above the original target of 45 percent, and have remained at that level in the 1996-97 Pakistani fiscal year. Under the 65 percent ceiling, the October 1995 “temporary” duty on most imports of 5 to 10 percent also remains in place. The average tariff rate, exclusive of the “temporary” duty, is about 45 percent. If the new government, elected on February 3, 1997, enters into a comprehensive macroeconomic adjustment program with the International Monetary Fund (IMF) later this year, additional commitments to reduce the maximum tariff level likely will be a part of the reform package.

In July 1993, Pakistan ceased requiring import licenses for all "freely importable" goods, (i.e., all items not on the negative list of items banned for religious, health, or security reasons, or justified according to provisions of international agreements). As Pakistan has liberalized its trade regime both on its own and as part of various trade agreements, Pakistan has reduced its negative list of banned import items from 215 categories of products in 1990 to 68 in 1996.

Despite the reforms of recent years, Pakistan's applied tariffs and various import surcharges and taxes continue to significantly restrict U.S. exports to Pakistan. For example, Pakistan imposes a 12 percent applied tariff on soda ash, the principal raw material for making glass. Pakistan's additional import fees, surcharges, and taxes, however, result in an effective import duty of over 50 percent, one of the world's highest soda ash import duties. Due to those restrictive duties, U.S. soda ash exporters are effectively

excluded from the Pakistani market, resulting in an estimated loss of $25-50 million in annual exports according to U.S. industry representatives.

Another example of a significant import restriction which Pakistan has maintained, and even made more onerous despite its general policy of trade liberalization, has been the treatment of certain pharmaceutical raw material imports. Pakistan typically grants special tariff and tax exemptions for pharmaceuticals not available domestically. However, the special exemptions end once firms commence domestic manufacturing of competing pharmaceutical products. Pakistan periodically has increased the import surcharges known as "regulatory duties" on those imports which remain competitive despite the end of the special tariff exemptions. In addition, Pakistan has raised the sales taxes repeatedly on many imported pharmaceutical packaging and raw materials while prohibiting firms from passing the sales tax increases on to end-product customers. With effective tariff rates reaching 95 percent on some pharmaceutical raw materials and with strict price controls in place, many foreign pharmaceutical firms reportedly are considering withdrawing altogether from the Pakistani market. The United States will continue working to ensure that Pakistan provides adequate market access to U.S. pharmaceutical exports and investment.

There was at least one noticeable improvement during 1996 in the otherwise extensive barriers to U.S. film and entertainment exports. In July 1996, the Pakistani Central Board of Revenue reversed its earlier policy and stopped collecting an import duty on foreign film royalties. Despite that improvement, U.S. film and entertainment exports still face a range of restrictive barriers in Pakistan. The provincial governments, for example, impose an entertainment tax of 55 to 75 percent on all imported motion pictures. The federal government, meanwhile, enforces strict licensing requirements and quotas on theaters eligible to screen foreign films. Those government-imposed costs, together with admission price controls, serve as very strong disincentives for distributors and theater owners wishing to legally import and screen U.S. films. It is estimated that U.S. exports would increase by $5-10 million annually if the barriers were eliminated.

The Pakistani tariff regime also is characterized by complexity, broad bureaucratic discretionary powers, and very limited transparency. Administrative decisions frequently grant exemptions and concessions from general rules under the system of special regulatory orders (SRO) that amount to temporary duty suspension decrees. As a result, different rates are frequently applied to the same product and average applied rates are sometimes lower than statutory duties. The December 1996 IMF "standby" program aims to simplify the tariff structure through elimination of some tariff exemptions and concessions. While this program, if fully implemented, should help simplify the system and make it more transparent, it could result in higher applied tariffs on certain U.S. exports. If applied equitably and consistently, however, simplifying Pakistan's tariff regime would greatly benefit U.S. exporters.

Complaints by traders and investors about customs procedures are common. For example, as with the pharmaceutical issue noted above, preferential tariff rates are usually granted only if the goods in question are not also domestically manufactured. Disputes sometimes arise over this provision, with firms arguing that local output does not meet their quality specifications. Foreign firms also cite arbitrary and inconsistent customs valuations with frequent and unexplained changes in rates. Allegations that customs officers demand bribes are also common.

U.S. exporters have complained of particular problems with implementation of Pakistan's preshipment inspection (PSI) system, run by the Swiss firms SGS and Cotechna. U.S. companies contend that the PSI procedures often result in significant overvaluation of U.S. exports to Pakistan. In addition, U.S. businesses report that the PSI firms, which represent the Government of Pakistan, frequently cause significant delays to U.S. exports with little or no explanation and in apparent violation of the WTO Agreement on Preshipment Inspection. The PSI barriers have had a significant impact on a wide variety of U.S. exports. Responding to foreign and domestic private sector complaints, Pakistan's interim government served a contract cancellation notice on December 12, 1996, to both PSI firms, whose contracts expired on March 11, 1997. The Pakistani Government intends to replace the PSI system with an import trade price (ITP) system run by the Pakistani Customs Agency. The U.S. Embassy estimates that elimination of the PSI barriers will increase U.S. exports by $25-100 million annually.

The Pakistani Government offers investment incentives, such as tax holidays, in various sectors. These incentives sometimes include barriers to imported products. In the pharmaceutical sector, as discussed above, locally produced pharmaceutical raw materials often are taxed at lower rates than the sales taxes imposed on competing imported products. The U.S. Embassy estimates that these practices result in the loss of $5-10 million of annual U.S. exports.

GOVERNMENT PROCUREMENT

The government, along with its numerous state-run corporations, is Pakistan's largest importer. Work performed for government agencies, including purchase of imported equipment and services, is usually awarded through tenders that are publicly announced and/or issued to registered suppliers. The Government of Pakistan subscribes to principles of international competitive bidding, but political influence on procurement decisions is common, and these decisions are not always made on the basis of price and technical quality alone. Charges of official corruption and long delays in bureaucratic decision-making are common. Pakistan is not a member of the WTO Government Procurement Code. The U.S. Embassy estimates that if these barriers were eliminated, U.S. exports would increase by $10-25 million.

EXPORT SUBSIDIES

Pakistan actively promotes the export of Pakistani goods with measures such as government financing and tariff concessions on imported inputs, and income and sales tax concessions. Pakistan has established one export processing zone (EPZ) in Karachi. EPZ benefits include tax holidays, indefinite carry forward of losses, exemption of imports from taxes and duties, and exemption from labor laws and various other regulatory regimes.

While Pakistan has not reported any export subsidies to the WTO, the government-run Rice Export Corporation of Pakistan (RECP) continued to sell rice to selected exporters for well below market prices in 1996. However, the RECP is in the process of being merged with the Trading Corporation of Pakistan and is not expected to play a significant role in the export of rice in the future.

Pakistan

LACK OF INTELLECTUAL PROPERTY PROTECTION

As a WTO member, Pakistan is subject to the terms of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). The United States has taken various steps to ensure that Pakistan complies with its TRIPs commitments, particularly with respect to fulfilling its obligation to establish a "mailbox" for agricultural chemical and pharmaceutical product patent applications. After repeated bilateral consultations and a U.S. request for establishment of a WTO Dispute Settlement Panel, the Pakistani President issued an executive ordinance on February 4, 1997, establishing a mailbox system and granting exclusive marketing rights to patent applicants under certain conditions. U.S. and Pakistani officials notified the WTO on February 28 that this matter has been settled, based on a common understanding of the appropriate implementing regulations necessary for Pakistan to meet its TRIPs obligation.

Intellectual property piracy in Pakistan remains widespread. Pakistani authorities have taken some steps to strengthen enforcement, including raids on hundreds of pirated-video rental shops. The government has pledged to continue such efforts. However, the fines applied to violators have been too small to provide a credible deterrent.

The U.S.-Pakistan Treaty of Friendship, Commerce and Navigation guarantees national and most-favored-nation (MFN) treatment for patents, trademarks, and industrial property rights. Pakistan is a member of the Berne Convention, the Universal Copyright Convention, and the World Intellectual Property Organization, but not a member of the Paris Convention for the Protection of Industrial Property.

Patents

Current law protects only process patents for a duration of sixteen years, although the government is committed to eventually offering product patents in accordance with its WTO obligations. U.S. industry representatives have complained that the right of the patentee is not adequately protected by law, permitting infringers to continue freely manufacturing illegal products. In addition, only the patent-owner, not licensees, can file a suit against an infringer. There also is always the threat of revocation of the patent and/or compulsory licensing.

Trademarks

There have been occasional instances of trademark infringement, involving a range of products such as toys, playing cards, and industrial machinery. In August 1994, the Pakistani Government issued new drug labeling rules requiring the generic name of substances to be printed “with at least equal prominence as that of the brand name.” This rule serves to dilute in the minds of consumers existing differences in quality, efficacy, and safety, and incorrectly implies total interchangeability and equality among different products. The U.S. Embassy estimates a loss of $5-10 million in U.S. exports for patent and trademark violations.

Copyrights

Violations of intellectual property rights in Pakistan are most common in the area of copyrights, where the piracy levels are exceptionally high. The market for imported computer software has remained nearly 100

percent pirated, while U.S. industry representatives estimate that the piracy rate for videos has declined to around 80 percent. As a result of strengthened law enforcement (277 raids reported in 1996), some video outlets are taking steps to offer legitimate products. Piracy of copyrighted textile designs and reprint piracy of books (especially computer books, business titles, and medical texts) continue to be significant problems. At least some counterfeit products made in Pakistan reportedly are exported to other markets.

Even though there have been some improvements in enforcement, there is much more to be done to reduce piracy levels. In particular, the judicial system seems ill-prepared to deal with a more concerted enforcement strategy. Sustained, stronger law enforcement is insufficient without action by the courts to prosecute and sentence violators. In addition, Pakistan's copyright law, which was improved by amendments in 1992, remains incompatible with international standards established by the Berne Convention and the TRIPs Agreement.

In the area of copyright infringement alone in Pakistan, the International Intellectual Property Alliance estimates that piracy of films, sound recordings, computer programs, and books resulted in trade losses of $45 million in 1996.

SERVICES BARRIERS

Several sectors, including banking, insurance, transportation, and telecommunications, are affected by services barriers. Portions of major service industries are nationalized and run by the government.

Foreign banks are generally restricted to no more than four branches, are subject to higher withholding taxes than domestic banks, and face restrictions on doing business with state-owned corporations. Foreign brokers can join one of the country's three stock exchanges only as part of a joint venture with a Pakistani firm.

New foreign entrants to the general insurance market are virtually barred. Foreign firms wishing to compete in the life insurance market, while not barred, also face severe obstacles. Those few foreign insurance companies operating in Pakistan face various tax problems, long delays in remitting profits, and problems associated with operating within the insurance cartel.

Basic telephony remains the monopoly of the majority state-owned Pakistan Telecommunications Corporation, but competition among private providers is now allowed in cellular telephony.

In the recently concluded WTO negotiations on basic telecommunications services, Pakistan made commitments on basic telecom services, with phase-in of some obligations. For instance, Pakistan will provide national treatment for voice services, private leased circuit services, and telegraph services by 2004. Pakistan also agreed to permit foreign ownership or control of all telecommunications services and facilities by 2004. As part of the agreement, Pakistan also adopted certain pro-competitive regulatory principles. Pakistan took a MFN exemption on accounting rates.

If all services barriers were eliminated, the U.S. Embassy estimates an increase in U.S. exports of $25-100 million.

Pakistan

INVESTMENT BARRIERS

Foreigners may invest without prior government approval, up to 100 percent ownership, in all but the following industries: arms and ammunition, security printing (currency and mint), radioactive substances, and non-industrial alcohol. With these exceptions, statutory provision of national treatment exists for foreign investors in industrial sectors, though it does not in non-industrial sectors.

Foreign investors cannot own land for agriculture, forestry, irrigation, or real estate. However, with the approval of the relevant provincial government, foreign investors can obtain long-term leases on land for commercial and industrial purposes. Foreign ownership of land in joint venture with Pakistani citizens may be allowed. Where investment is allowed, repatriation of profits (excluding insurance companies), dividends, and capital (excluding banks) is freely allowed.

Local content requirements can occur in the automobile, electronics, electrical products, and engineering industries under Pakistan's "deletion program." The program is ostensibly not compulsory. However, at least one telecom equipment producer has reported that telecom licensees must adhere to the import deletion program. Investors who "voluntarily" undertake to increase the local content of their output enjoy lower tariffs on imported inputs but are subject to fines for non-compliance with an agreed-upon import deletion schedule. In the auto sector, U.S. industry representatives report that the Pakistani Government “expects” new motor vehicle assembly plants to achieve a local content level of at least 40 percent within five years of starting production. U.S. industry representatives report further that 40 percent local content level is a firm requirement after seven years of starting production of motor vehicles in Pakistan. Local content requirements such as these will have to be phased out in order for Pakistan to comply with the WTO Agreement on Trade Related Investment Measures (TRIMs).

In order to comply with conditionalities under the 1995 “standby” agreement with the IMF in January 1996, the Pakistani Government withdrew the investment incentives that applied to rural areas, "less developed areas,” and those designated as special industrial zones. Fiscal incentives such as tax holidays, duty-free importation of machinery and duty and sales tax exemptions on the importation of raw materials also were eliminated. However, the federal government continues to offer incentives for foreign investment in specific industrial sectors, including oil and gas exploration and development, as well as in state-owned energy utilities, banks, and the phone company all slated for privatization.

OTHER BARRIERS

Lack of transparency is a recurrent problem in many areas, including government procurement and customs valuation. Two federal government bodies take an interest in this problem, in addition to various government departments that might investigate allegations of corruption under their purview. The Monopolies Control Authority is credited with being reasonably effective at combating the practices covered by the law it is charged with enforcing, although the law is somewhat narrow in scope. The federal Anti-Corruption Commission is considered a somewhat politicized, and therefore less effective, body.